

## OFFICE COPY

Prepared By \_\_\_\_\_

Approved By \_\_\_\_\_

An act to amend Section 65962.5 of the Government Code, and to amend Sections 25173.6, 25185.5, 25202.5, and 25395.99 of, to add Sections 58019, 58020, and 58021 to, to add Article 11.1 (commencing with Section 25220) to Chapter 6.5 of Division 20 of, to add Chapter 6.86 (commencing with Section 25396) to Division 20 of, to repeal Sections 25117.3, 25117.4, 25149.3, 25356.2, 25356.3, 25356.4, 25356.5, 25356.6, 25356.7, 25356.8, 25356.9, and 25356.10 of, and to repeal Article 11 (commencing with Section 25220) of Chapter 6.5 of, to repeal Article 6.5 (commencing with Section 25369) of Chapter 6.8 of, to repeal Article 8 (commencing with Section 25395.1) of Chapter 6.8 of, to repeal Chapter 6.85 (commencing with Section 25396) of, and to repeal Chapter 6.10 (commencing with Section 25401) of, Division 20 of, the Health and Safety Code, relating to hazardous materials, and making an appropriation therefor, to take effect immediately, bill related to the budget.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65962.5 of the Government Code is amended to read:

65962.5. (a) The Department of Toxic Substances Control shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all of the following:

(1) All hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code.

(2) All land designated as hazardous waste property or border zone property pursuant to former Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code.

(3) All information received by the Department of Toxic Substances Control pursuant to Section 25242 of the Health and Safety Code on hazardous waste disposals on public land.

(4) All sites listed pursuant to Section 25356 of the Health and Safety Code.

~~(5) All sites included in the Abandoned Site Assessment Program.~~

(b) The State Department of Health Services shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all public drinking water wells that contain detectable levels of organic contaminants and that are subject to water analysis pursuant to Section 116395 of the Health and Safety Code.

(c) The State Water Resources Control Board shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all of the following:

(1) All underground storage tanks for which an unauthorized release report is filed pursuant to Section 25295 of the Health and Safety Code.

(2) All solid waste disposal facilities from which there is a migration of hazardous waste and for which a California regional water quality control board has notified the Department of Toxic Substances Control pursuant to subdivision (e) of Section 13273 of the Water Code.

(3) All cease and desist orders issued after January 1, 1986, pursuant to Section 13301 of the Water Code, and all cleanup or abatement orders issued after January 1, 1986, pursuant to Section 13304 of the Water Code, that concern the discharge of wastes that are hazardous materials.

(d) The local enforcement agency, as designated pursuant to Section 18051 of Title 14 of the California Code of Regulations, shall compile as appropriate, but at least annually, and shall submit to the ~~California Integrated Waste Management Board~~ Department of Resources Recycling and Recovery, a list of all solid waste disposal facilities from which there is a known migration of hazardous waste. The ~~California Integrated Waste Management Board~~ Department of Resources Recycling and Recovery shall compile the local lists into a statewide list, which shall be submitted to the Secretary for Environmental Protection and shall be available to any person who requests the information.

(e) The Secretary for Environmental Protection shall consolidate the information submitted pursuant to this section and distribute it in a timely fashion to each city and county in which sites on the lists are located. The secretary shall distribute the information to any other person upon request. The secretary may charge a reasonable

fee to persons requesting the information, other than cities, counties, or cities and counties, to cover the cost of developing, maintaining, and reproducing and distributing the information.

(f) Before a lead agency accepts as complete an application for any development project which will be used by any person, the applicant shall consult the lists sent to the appropriate city or county and shall submit a signed statement to the local agency indicating whether the project and any alternatives are located on a site that is included on any of the lists compiled pursuant to this section and shall specify any list. If the site is included on a list, and the list is not specified on the statement, the lead agency shall notify the applicant pursuant to Section 65943. The statement shall read as follows:

#### HAZARDOUS WASTE AND SUBSTANCES STATEMENT

The development project and any alternatives proposed in this application are contained on the lists compiled pursuant to Section 65962.5 of the Government Code. Accordingly, the project applicant is required to submit a signed statement that contains the following information:

Name of applicant:

Address:

Phone number:

Address of site (street name and number if available, and ZIP Code):

Local agency (city/county):

Assessor's book, page, and parcel number:

Specify any list pursuant to Section 65962.5 of the Government Code:

Regulatory identification number:

Date of list:

---

Applicant, Date

(g) The changes made to this section by the act amending this section, that takes effect January 1, 1992, apply only to projects for which applications have not been deemed complete on or before January 1, 1992, pursuant to Section 65943.

SEC. 2. Section 25117.3 of the Health and Safety Code is repealed.

~~25117.3. (a) “Hazardous waste property” means land which is either of the following:~~

~~(1) Any hazardous waste facility or portion thereof, required to be permitted pursuant to this chapter, which has a permit for disposal from the department or has submitted an application for such a permit.~~

~~(2) A portion of any land designated as a hazardous waste property pursuant to Section 25229 where a significant disposal of hazardous waste has occurred on, under, or into the land resulting in a significant existing or potential hazard to present or future public health or safety.~~

~~(b) “Hazardous waste property” does not mean residential land that has never received waste chemicals from an industrial, commercial, agricultural, research, or business activity.~~

SEC. 3. Section 25117.4 of the Health and Safety Code is repealed.

~~25117.4. “Border zone property” means any property designated as border zone property pursuant to Section 25229 which is within 2,000 feet of a significant disposal of hazardous waste, and the wastes so located are a significant existing or potential hazard to present or future public health or safety on the land in question.~~

SEC. 4. Section 25149.3 of the Health and Safety Code is repealed.

~~25149.3. (a) Upon the request of any interested person, the department shall examine and determine whether or not the use of any property for any one of the purposes set forth in paragraph (1) of subdivision (b) of Section 25232 constitutes a significant existing or potential hazard to present or future health or safety because of the proximity of the property to an existing hazardous waste facility as defined in this article. If the department determines that a significant existing or potential hazard to present or future public health or safety exists on the property, it shall give notice and hold a public hearing. If a significant disposal of hazardous waste has occurred on that property or if the property is within 2,000 feet of a significant disposal of hazardous waste, the department shall hold this public hearing pursuant to Article 11 (commencing with Section 25220) and the director may make a designation of that property pursuant to that article. If the department determines that there is no significant existing or potential hazard to present or future public health or safety on the property, it shall so notify the person who requested the determination and the local jurisdiction.~~

~~(b) All costs incurred by the department pursuant to this section, including the costs of any hearing, shall be borne by the person making the request. The authority conferred on the department, pursuant to this section, shall be in addition to its authority with respect to the regulation of hazardous waste property and border zone property. A special account administered by the department shall be established for each request made to the department for the examination and determination specified in subdivision (a). The department shall provide the requesting person an estimate of the amount of money which would be necessary to accomplish the examination, determination, and any subsequent hearing by the department pursuant to that request. The estimated~~

~~amount, which shall be paid to the department before the department undertakes any activity pursuant to subdivision (a), shall be deposited in the special account.~~

~~Expenditures from this special account shall not be made in excess of the total amount of money in that special account at any time. Expenditures in excess of the initial deposit may be made only when additional money is received from the requesting person and deposited into the account.~~

~~Notwithstanding any other provision of law, the department may enter into contracts for any action taken, or to be taken, pursuant to subdivision (a). These contracts do not require approval by the Department of General Services pursuant to Article 1 (commencing with Section 14780) of Chapter 6 of Part 5.5 of Division 3 of Title 2 of the Government Code.~~

~~(c) A local jurisdiction shall not take any action with respect to the uses of land for any of those purposes, including, but not limited to, a general plan amendment, zoning change, or the imposition of conditions on the use of property, which land is subject to an existing zoning classification which permits the uses set forth in paragraph (1) of subdivision (b) of Section 25232 for which an examination and determination has been requested pursuant to subdivision (a), solely on the basis of a health hazard due to the property's proximity to an existing hazardous waste facility, unless the department has made a determination, pursuant to subdivision (a), that those uses of the property constitute a significant existing or potential hazard to present or future public health or safety.~~

~~(d) No application for a building permit or for the use of property which is the subject of a request pursuant to subdivision (a) shall be acted upon pending a~~

~~determination by the department, unless the permit or use is not for a purpose set forth in paragraph (1) of subdivision (b) of Section 25232.~~

~~The department shall act upon the request within 90 days.~~

~~(c) This section does not apply to any land or property which is more than one mile from a significant disposal of hazardous waste within an existing hazardous waste facility, as defined in this article.~~

SEC. 5. Section 25173.6 of the Health and Safety Code is amended to read:

25173.6. (a) There is in the General Fund the Toxic Substances Control Account, which shall be administered by the director. In addition to any other money that may be appropriated by the Legislature to the Toxic Substances Control Account, all of the following shall be deposited in the account:

(1) The fees collected pursuant to Section 25205.6.

(2) The fees collected pursuant to Section 25187.2, to the extent that those fees are for oversight of a removal or remedial action taken under Chapter 6.8 (commencing with Section 25300) or Chapter ~~6.85~~ 6.86 (commencing with Section 25396).

(3) Fines or penalties collected pursuant to this chapter, Chapter 6.8 (commencing with Section 25300) or Chapter ~~6.85~~ 6.86 (commencing with Section 25396), except as directed otherwise by Section 25192.

(4) Interest earned upon money deposited in the Toxic Substances Control Account.

(5) All money recovered pursuant to Section 25360, except any amount recovered on or before June 30, 2006, that was paid from the Hazardous Substance Cleanup Fund.

(6) All money recovered pursuant to Section 25380.



(7) All penalties recovered pursuant to Section 25214.3, except as provided by Section 25192.

(8) All penalties recovered pursuant to Section 25214.22.1, except as provided by Section 25192.

(9) All penalties recovered pursuant to Section 25215.7, except as provided by Section 25192.

(10) Reimbursements for funds expended from the Toxic Substances Control Account for services provided by the department, including, but not limited to, reimbursements required pursuant to Sections 25201.9 and 25343.

(11) Money received from the federal government pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(12) Money received from responsible parties for remedial action or removal at a specific site, except as otherwise provided by law.

(b) The funds deposited in the Toxic Substances Control Account may be appropriated to the department for the following purposes:

(1) The administration and implementation of the following:

(A) Chapter 6.8 (commencing with Section 25300), except that funds shall not be expended from the Toxic Substances Control Account for purposes of Section 25354.5.

(B) Chapter ~~6.85~~ 6.86 (commencing with Section 25396).

(C) Article 10 (commencing with Section 7710) of Chapter 1 of Division 4 of the Public Utilities Code, to the extent the department has been delegated responsibilities by the secretary for implementing that article.

(D) Activities of the department related to pollution prevention and technology development, authorized pursuant to this chapter.

(2) The administration of the following units, and successor organizations of those units, within the department, and the implementation of programs administered by those units or successor organizations:

(A) The Human and Ecological Risk Division.

(B) The Environmental Chemistry Laboratory.

(C) The Office of Pollution Prevention and Technology Development.

(3) For allocation to the Office of Environmental Health Hazard Assessment, pursuant to an interagency agreement, to assist the department as needed in administering the programs described in subparagraphs (A) and (B) of paragraph (1).

(4) For allocation to the State Board of Equalization to pay refunds of fees collected pursuant to Section 43054 of the Revenue and Taxation Code.

(5) For the state share mandated pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)).

(6) For the purchase by the state, or by a local agency with the prior approval of the director, of hazardous substance response equipment and other preparations for response to a release of hazardous substances. However, all equipment shall be purchased in a cost-effective manner after consideration of the adequacy of existing

equipment owned by the state or the local agency, and the availability of equipment owned by private contractors.

(7) For payment of all costs of removal and remedial action incurred by the state, or by a local agency with the approval of the director, in response to a release or threatened release of a hazardous substance, to the extent the costs are not reimbursed by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(8) For payment of all costs of actions taken pursuant to subdivision (b) of Section 25358.3, to the extent that these costs are not paid by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(9) For all costs incurred by the department in cooperation with the Agency for Toxic Substances and Disease Registry established pursuant to subsection (i) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(i)) and all costs of health effects studies undertaken regarding specific sites or specific substances at specific sites. Funds appropriated for this purpose shall not exceed five hundred thousand dollars (\$500,000) in a single fiscal year. However, these actions shall not duplicate reasonably available federal actions and studies.

(10) For repayment of the principal of, and interest on, bonds sold pursuant to Article 7.5 (commencing with Section 25385) of Chapter 6.8.

~~(11) For the reasonable and necessary administrative costs and expenses of the Hazardous Substance Cleanup Arbitration Panel created pursuant to Section 25356.2.~~

~~(12)~~

~~(11)~~ Direct site remediation costs.

~~(13)~~

~~(12)~~ For the department's expenses for staff to perform oversight of investigations, characterizations, removals, remediations, or long-term operation and maintenance.

~~(14)~~

~~(13)~~ For the administration and collection of the fees imposed pursuant to Section 25205.6.

~~(15)~~

~~(14)~~ For allocation to the office of the Attorney General, pursuant to an interagency agreement or similar mechanism, for the support of the Toxic Substance Enforcement Program in the office of the Attorney General, in carrying out the purposes of Chapter 6.8 (commencing with Section 25300) and Chapter ~~6.85~~ 6.86 (commencing with Section 25396).

~~(16)~~

~~(15)~~ For funding the California Environmental Contaminant Biomonitoring Program established pursuant to Chapter 8 (commencing with Section 105440) of Part 5 of Division 103.

~~(17)~~

~~(16)~~ As provided in Sections 25214.3 and 25215.7 and, with regard to penalties recovered pursuant to Section 25214.22.1, to implement and enforce Article 10.4 (commencing with Section 25214.11).

(c) The funds deposited in the Toxic Substances Control Account may be appropriated by the Legislature to the Office of Environmental Health Hazard Assessment and the State Department of Public Health for the purposes of carrying out their duties pursuant to the California Environmental Contaminant Biomonitoring Program (Chapter 8 (commencing with Section 105440) of Part 5 of Division 103).

(d) The director shall expend federal funds in the Toxic Substances Control Account consistent with the requirements specified in Section 114 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9614), upon appropriation by the Legislature, for the purposes for which they were provided to the state.

(e) Money in the Toxic Substances Control Account shall not be expended to conduct removal or remedial actions if a significant portion of the hazardous substances to be removed or remedied originated from a source outside the state.

(f) The Director of Finance, upon request of the director, may make a loan from the General Fund to the Toxic Substances Control Account to meet cash needs. The loan shall be subject to the repayment provisions of Section 16351 of the Government Code and the interest provisions of Section 16314 of the Government Code.

(g) The Toxic Substances Control Account established pursuant to subdivision (a) is the successor fund of all of the following:

(1) The Hazardous Substance Account established pursuant to Section 25330, as that section read on June 30, 2006.

(2) The Hazardous Substance Clearing Account established pursuant to Section 25334, as that section read on June 30, 2006.

(3) The Hazardous Substance Cleanup Fund established pursuant to Section 25385.3, as that section read on June 30, 2006.

(4) The Superfund Bond Trust Fund established pursuant to Section 25385.8, as that section read on June 30, 2006.

(h) On and after July 1, 2006, all assets, liabilities, and surplus of the accounts and funds listed in subdivision (g), shall be transferred to, and become a part of, the Toxic Substances Control Account, as provided by Section 16346 of the Government Code. All existing appropriations from these accounts, to the extent encumbered, shall continue to be available for the same purposes and periods from the Toxic Substances Control Account.

(i) Notwithstanding Section 10231.5 of the Government Code, the department, on or before February 1 of each year, shall report to the Governor and the Legislature on the prior fiscal year's expenditure of funds within the Toxic Substances Control Account for the purposes specified in subdivision (b).

SEC. 6. Section 25185.5 of the Health and Safety Code is amended to read:

25185.5. ~~In order to carry out the purposes of~~ For a property that is designated as a hazardous waste property or border zone property pursuant to the former Article 11 (commencing with Section 25220), ~~any~~ an authorized representative of the department may, at any reasonable hour of the day, or as authorized pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, enter and inspect any real property ~~which~~ that is within 2,000 feet of a deposit of hazardous waste or a hazardous waste property and do any of the following:

(a) Obtain samples of the soil, vegetation, air, water, and biota on or beneath the land.

(b) Set up and maintain monitoring equipment for the purpose of assessing or measuring the actual or potential migration of hazardous wastes on, beneath, or toward the land.

(c) Survey and determine the topography and geology of the land.

(d) Photograph any equipment, sample, activity, or environmental condition described in subdivision (a), (b), or (c). The photographs shall be subject to the requirements of subdivision (d) of Section 25185.

(e) This section does not apply to any hazardous waste facility ~~which~~ that is required to be permitted pursuant to this chapter and ~~which~~ that is subject to inspection pursuant to Section 25185.

(f) An inspector who inspects pursuant to this section shall make a reasonable effort to inform the owner or his or her authorized representative of the inspection and shall provide split samples to the owner or representative upon request and shall comply with the provisions of subdivision (b) of Section 25185.

SEC. 7. Section 25202.5 of the Health and Safety Code is amended to read:

25202.5. (a) With respect to any hazardous waste facility permitted pursuant to Section 25200 or granted interim status pursuant to Section 25200.5, the department may do either of the following:

(1) Enter into an agreement with the owner of the hazardous waste facility that requires the execution and recording of a written instrument ~~which~~ that imposes an easement, covenant, restriction, or servitude upon the present and future uses of all or

part of the land on which the hazardous waste facility subject to the permit or grant of interim status is located and on all or part of any adjacent land held by, or for the beneficial use of, the owners of the land on which the hazardous waste facility subject to the permit or grant of interim status is located.

(2) Impose a requirement upon the owner of the hazardous waste facility, by permit modification, permit condition, or otherwise, that requires the execution and recording of a written instrument ~~which~~ that imposes an easement, covenant, restriction, or servitude upon the present and future uses of all or part of the land on which the hazardous waste facility subject to the permit or grant of interim status is located and on all or part of any adjacent land held by, or for the beneficial use of, the owners of the land on which the hazardous waste facility subject to the permit or grant of interim status is located.

(b) (1) The easement, covenant, restriction, or servitude imposed pursuant to subdivision (a) shall be no more restrictive than needed, as determined by the department, to protect the present or future public health and safety and shall not place any restriction on any land that limits the use, modification, or expansion of an existing industrial or manufacturing facility or complex. The instrument shall be executed by all of the owners of the land and by the director, shall particularly describe the real property affected by the instrument, and shall be recorded by the owner in the office of the county recorder in each county in which all, or a portion of, the land is located within 10 days of the date of execution. The easement, covenant, restriction, or servitude shall state that the land described in the instrument has been, or will be, the site of a hazardous waste facility or is adjacent to the site of such a facility, and may impose



those use restrictions as the department deems necessary to protect the present or future public health. The restrictions may include restrictions upon activities on, over, or under the land, including, but not limited to, a prohibition against building, filling, grading, excavating, or mining without the written permission of the director.

~~A~~

(2) ~~A~~ certified copy of the recorded easement, covenant, restriction, or servitude shall be sent to the department upon recordation. Notwithstanding any other ~~provision~~ of law, except as provided in Section 25202.6, an easement, covenant, restriction, or servitude executed pursuant to this section and recorded so as to provide constructive notice shall run with the land from the date of recordation and shall be binding upon all of the owners of the land, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. The easement, covenant, restriction, or servitude shall be enforceable by the department pursuant to Article 8 (commencing with Section 25180).

(c) Except as provided in subdivisions (d) and (e), any land on which is located a hazardous waste disposal facility permitted pursuant to this chapter shall be surrounded by a minimum buffer zone of 2,000 feet between the facility and the outer boundary of the buffer zone. The department may impose an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, on the buffer zone pursuant to subdivision (a). If the department determines that a buffer zone of more than 2,000 feet is necessary to protect the present and future public health and safety, the department may increase the buffer zone by restricting the disposal of hazardous waste at that facility to land surrounded by a larger buffer zone.

(d) Subdivision (c) does not apply to ~~any hazardous waste property, as defined in paragraph (1) of subdivision (a) of Section 25117.3, which a property that~~ was actually and lawfully used for the disposal of hazardous waste on August 6, 1980.

(e) If the owner of a hazardous waste disposal facility proves to the satisfaction of the department that a buffer zone of less than 2,000 feet is sufficient to protect the present and future public health and safety, the department may allow the disposal of hazardous waste onto land surrounded by a buffer zone of less than 2,000 feet.

SEC. 8. Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code is repealed.

SEC. 9. Article 11.1 (commencing with Section 25220) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 11.1. Institutional Control

25220. (a) The department shall notify the planning and building department of each city, county, or regional council of governments of any recorded land use restriction imposed within the jurisdiction of the local agency pursuant to the former Section 25229, 25230, or 25398.7, as those sections read prior to the effective date of this article, or Section 25202.5, 25221, or 25355.5. Upon receiving this notification, the planning and building department shall do both of the following:

(1) File all recorded land use restrictions in the property files of the city, county, or regional council of government.

(2) Require that a person requesting a land use that differs from those filed land use restrictions on the property apply to the department for a variance or a removal of the land use restrictions pursuant to Section 25223 or 25224.

(b) A planning and building department of a city, county, or regional council of governments may assess a property owner a reasonable fee to cover the costs of taking the actions required by subdivision (a). For purposes of this subdivision, “property owner” does not include a person who holds evidence of ownership solely to protect a security interest in the property, unless the person participates, or has a legal right to participate, in the management of the property.

(c) The department shall maintain a list of all recorded land use restrictions, including deed restrictions, recorded pursuant to the former Sections 25229, 25230, and 25398.7, as those sections read prior to the effective date of this article, and Sections 25202.5, 25221, and 25355.5. The list shall, at a minimum, provide the street address, or, if a street address is not available, an equivalent description of location for a rural location or the latitude and longitude of each property. The department shall update the list as new deed restrictions are recorded. The department shall make the list available to the public, upon request, and shall make the list available on the department’s Internet Web site. The list shall also be incorporated into the list of sites compiled pursuant to Section 65962.5 of the Government Code.

25221. A person may enter into an agreement with the department regarding his or her property, or a portion thereof, which provides for restricting specified uses of the property, as determined by all parties to the agreement. Except as otherwise provided in this article, the agreement is irrevocable and shall be recorded by the owner,

pursuant to paragraph (1) of subdivision (a) of Section 25220, as a hazardous waste easement, covenant, restriction, or servitude, or any combination of those servitudes, as appropriate, upon the present and future uses of the land. That person shall bear all costs incurred in determining the specific land use restrictions for his or her property, or a portion of the property pursuant to this subdivision.

25222. Public notice of an agreement proposed to be entered into pursuant to Section 25221 shall be provided by the department at least 30 days before a hearing on, or execution of, the agreement. The notice shall be given by publication once in a newspaper of general circulation published and circulated in the locale or, if there is none, by posting the notice in at least three public places in the locale. In the case of a proposed agreement, the department shall also give notice to the city or county in whose jurisdiction the property is located. Public comment on the proposed agreement entered into pursuant to Section 25221 shall be submitted to the department in writing.

25223. (a) A person may apply to the department for a written variance from a land use restriction imposed by the department. An application shall contain sufficient evidence for the department to issue a notice for a hearing. The notice shall contain both of the following:

(1) A statement of all of the following that apply:

(A) Land use restrictions have been imposed on the land.

(B) A hearing is pending on the land.

(2) A statement of who is applying for a variance, the proposed variance, and a statement of the reasons in support of the granting of a variance.

(b) The procedures for the conducting of the hearing specified in subdivision (a) are those set forth in former Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20. A person shall not make a subsequent application pursuant to this section within 18 months of a final decision on an application by the department. A person applying for a variance pursuant to this section shall pay the department for all costs incurred by the department relating to the application.

(c) The applicant shall have the burden of proving at the hearing that the variance will not cause or allow any of the following effects associated with hazardous waste or extremely hazardous waste:

(1) The creation or increase of significant present or future hazards to public health.

(2) A significant diminution of the ability to mitigate any significant potential or actual hazard to public health.

(3) A long-term increase in the number of humans or animals exposed to significant hazards that affect the health, well-being, or safety of the public.

(d) If, upon the preponderance of the testimony taken, the director is of the opinion that the variance should be granted, the director shall issue and cause to be served his or her decision and findings of fact on the owner of the land, the legislative body of the city or county in whose jurisdiction the land is located, and upon any other persons who were permitted to intervene in the proceedings. The findings of fact shall include the exact nature of the proposed variance and the reasons in support of the granting of the variance.

(e) If the director is of the opinion that the variance should not be granted, the director shall issue and cause to be served his or her findings of fact in support of the denial on the parties mentioned in subdivision (c).

(f) The department shall record within 10 days any final decision made by the director pursuant to this section as provided in Section 25225.

(g) A decision of the director made after a hearing held pursuant to this section shall be reviewable pursuant to Section 1094.5 of the Code of Civil Procedure and shall be upheld if the court finds that it is supported by substantial evidence.

25224. (a) A person may apply to the department to remove a land use restriction imposed by the department on the grounds that the waste no longer creates a significant existing or potential hazard to present or future public health or safety. A person shall not make a subsequent application pursuant to this section within 12 months of a final decision on an application by the department. A person applying to the department pursuant to this section shall pay the department all costs incurred by the department relating to the application. An application shall contain sufficient evidence for the department to make a finding upon any or all of the following grounds:

(1) The hazardous waste that caused the land to be restricted or designated has since been removed or altered in a manner that precludes any significant existing or potential hazard to present or future public health.

(2) New scientific evidence is available since the restriction or designation of the land or the making of any previous application pursuant to this section, concerning either of the following:

(A) The nature of the hazardous waste that caused the land to be designated.

(B) The geology or other physical environmental characteristics of the designated land.

(b) An aggrieved person may appeal a determination of the department made pursuant to subdivision (a) by submitting a request for a hearing to the director. The request shall be mailed by certified mail not later than 30 days after the date of the mailing of the department's decision on the application.

(c) Upon receipt of a timely appeal, the director shall give notice of a hearing pursuant to the procedures set forth in this article.

(d) The department shall record within 10 days any new and final determination made by the department pursuant to this section as provided in Section 25225.

(e) A determination made by the department, after a hearing held pursuant to this section, shall be reviewable pursuant to Section 1094.5 of the Code of Civil Procedure and shall be upheld if the court finds that it is supported by substantial evidence.

(f) Whenever there is a final determination pursuant to this section removing a land use restriction, the easement, covenant, restriction, or servitude imposed on the land created by Section 25221 or 25355.5 or the former Section 25222.1 or 25230 shall automatically terminate. The department shall record or cause to be recorded within 10 days a termination of the easement, covenant, restriction, or servitude, which shall particularly describe the real property subject to the easement, covenant, restriction, or servitude and shall be indexed by the recorder in the grantee index in the name of the record title owner of the real property subject to the easement, covenant, restriction, or servitude and in the grantor index in the name of the department.

25225. The department shall record within 10 days any final written instrument made pursuant to Section 25221 or 25224 with the county recorder of the county in which the property is located. Any recordation made pursuant to this article or Section 25202.5 or 25355.5 shall include the street address, assessor's parcel number, or legal description of each parcel affected and the name of the owner thereof, and the recordation shall be recorded by the recorder in the grantor index in the name of the record title owner of the real property and in the grantee index in the name of the department.

25226. An assessor shall consider a restrictive easement, covenant, restriction, or servitude adopted pursuant to the former Section 25230, as that section read prior to the effective date of this article, or Section 25202.5, 25221, or 25355.5 as an enforceable easement, covenant, restriction, or servitude subject to Section 402.1 of the Revenue and Taxation Code and shall appropriately reassess the land, those of which has been restricted, at the lien date following the adoption or imposition of the easement, covenant, restriction, or servitude.

SEC. 10. Section 25356.2 of the Health and Safety Code is repealed.

~~25356.2. (a) There is hereby created in the Office of Environmental Health Hazard Assessment a Hazardous Substance Cleanup Arbitration Panel.~~

~~(b) The panel shall apportion liability for the costs of removal and remedial actions in accordance with Sections 25356.3 and 25356.4. All meetings and records of the panel are exempt from Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of, and Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, the Government Code.~~



~~(c) The panel shall be comprised of independent private arbitrators who have applied to the Office of Environmental Health Hazard Assessment for membership on the panel. Panel members shall have (1) relevant arbitration background and (2) expertise in engineering, expertise in the physical, biological, or health sciences, or other relevant experience and qualifications. Three arbitrators shall be selected from the panel to apportion liability for a single hazardous wastesite. A majority of the arbitrators selected for a single site may apportion liability for the panel under this chapter.~~

~~(d) The arbitrators shall be selected for an individual hazardous wastesite as follows:~~

~~(1) One arbitrator shall be selected by the department or by the regional water quality control board.~~

~~(2) One arbitrator shall be selected by the potentially responsible party, or a majority of the potentially responsible parties, who have submitted to binding arbitration by the panel.~~

~~(3) The two arbitrators selected pursuant to paragraphs (1) and (2) shall jointly select a third arbitrator.~~

SEC. 11. Section 25356.3 of the Health and Safety Code is repealed.

~~25356.3. (a) The department or the California regional water quality control board shall serve a copy by mail of the draft remedial action plan upon all potentially responsible parties identified in the plan. Within 15 days after the issuance of a final remedial action plan, any potentially responsible parties with aggregate alleged liability in excess of 50 percent of the costs of removal and remedial action, as set forth in the~~

~~statement of reasons issued pursuant to subdivision (d) of Section 25356.1, but excluding any costs that are the subject of an agreement under which any party agrees to assume liability for those costs, may convene an arbitration proceeding by agreeing to submit to binding arbitration by the panel. The filing of a demand to convene an arbitration panel shall not stay any removal or remedial actions specified in the plan. If an arbitration panel is convened pursuant to this section, any other potentially responsible party may elect to submit to binding arbitration by the panel. Any person submitting to arbitration under this section shall agree not to contest the fact of liability in the arbitration. The panel shall, and the parties are entitled to, address the proper apportionment of liability pursuant to subdivision (b). Submission to arbitration under this section is not an admission of liability for any other purpose or in any other proceeding, including a subsequent arbitration proceeding concerning the same site. The department or the regional water quality control board, whichever issued the final remedial action plan, shall participate in the arbitration proceedings to the same extent as the potentially responsible parties which have submitted to the arbitration.~~

~~(b) The panel shall apportion liability for the costs of all removal and remedial actions specified in the final remedial action plan.~~

~~(c) In panel proceedings, liability for the costs of removal and remedial actions shall be apportioned among all identifiable potentially responsible parties regardless of whether those parties are before the panel or have otherwise been released, or are immune, from liability pursuant to this chapter or any other provision of law. The panel shall apportion liability based on all of the following criteria:~~

~~(1) The amount of hazardous substance for which each party may be responsible.~~

~~(2) The degree of toxicity of the hazardous substance.~~

~~(3) The degree of involvement of the potentially responsible parties in the generation, transportation, treatment, or disposal of the hazardous substance.~~

~~(4) The degree of care exercised by the potentially responsible parties with respect to the hazardous substances, taking into account the characteristics of the substance.~~

~~(5) The degree of cooperation by the potentially responsible parties with federal, state, and local officials to prevent harm to human health and the environment.~~

~~(d) The panel may issue subpoenas and subpoenas duces tecum to require attendance of a person or the production of documents, at the request of any person identified as potentially responsible in the remedial action plan, on its own motion, or at the request of the department or the appropriate regional water quality control board. A person requesting a subpoena duces tecum shall comply with Section 1985 of the Code of Civil Procedure. The jurisdiction of subpoenas and subpoenas duces tecum issued by the panel extends to all parts of the state. The subpoenas and subpoenas duces tecum shall be served pursuant to Sections 1987 and 1988 of the Code of Civil Procedure.~~

~~If the panel determines that a person is refusing to respond to a subpoena or subpoena duces tecum, or is guilty of a misconduct during the arbitration and negotiation process, the panel shall certify the facts to the superior court of the county in which the site is located. The court shall thereupon issue an order directing the person to appear before the court and show cause why the person should not be punished for contempt pursuant to Section 1209 of the Code of Civil Procedure. The order and a~~

~~copy of the certified statement shall be served on the person, and thereafter the court shall have jurisdiction of the matter. The same proceedings shall be followed, the same penalties may be imposed, and the person charged may be purged of contempt in the same way as if the person has committed a contempt in the trial of a civil action before a superior court.~~

~~After receipt of documents pursuant to a subpoena duces tecum, any party may request the panel for a continuance for a reasonable period of time to review the documents prior to proceeding with the arbitration. The panel may grant a continuance for that purpose upon a showing of good cause.~~

~~(e) This chapter does not require a regional water quality control board or the State Water Resources Control Board to engage in arbitration pursuant to this section or Section 25356.2 for any enforcement action taken pursuant to Division 7 (commencing with Section 13000) of the Water Code.~~

~~(f) The costs of conducting the arbitration shall be borne by the potentially responsible parties submitting to the arbitration pursuant to subdivision (a), except that any filing fees, witness fees, costs of discovery, or any other costs necessarily incurred by one party shall not be shared by any other party.~~

SEC. 12. Section 25356.4 of the Health and Safety Code is repealed.

~~25356.4. (a) After making an apportionment of liability among the potentially responsible parties pursuant to Section 25356.3, the panel shall prepare a draft arbitration decision which contains a statement of reasons supporting the apportionment and shall circulate the draft arbitration decision for at least 30 days for public comment. After~~

review and consideration of any public comment, the panel shall issue the final arbitration decision within 30 days after the comment period.

(b) Each potentially responsible party whose liability has been apportioned by the panel is liable to the department or the regional water quality control board for its apportioned share of the costs of all removal and remedial actions at the site which is the subject of the final remedial action plan issued pursuant to Section 25356.1. The department or the regional water quality control board and one or more potentially responsible parties may enter into a cleanup agreement which is consistent with the remedial action plan and which provides for the satisfaction of the liability of a potentially responsible party by the party's performance of specified removal or remedial actions at the site.

(c) The moneys in the state account may be expended, upon appropriation by the Legislature, to pay any share of those potentially responsible parties who did not submit to binding arbitration pursuant to Section 25356.3 or did not otherwise agree to pay the costs of the removal and remedial actions specified in the remedial action plan.

(d) The department or the regional water quality control board shall identify, and the Attorney General shall pursue recovery from, those potentially responsible parties who have not submitted to binding arbitration pursuant to Section 25356.3 or who have not discharged their obligations required by the final arbitration decision or the cleanup agreement.

(e) Advances from the state account, upon appropriation by the Legislature, shall be made available, where appropriate, to those responsible parties who are required

~~by a cleanup agreement to perform specified removal or remedial actions pursuant to the remedial action plan or, if the money advanced derives from the proceeds of bonds sold pursuant to Article 7.5 (commencing with Section 25385), for the purposes specified in Section 25385.6.~~

SEC. 13. Section 25356.5 of the Health and Safety Code is repealed.

~~25356.5. The department shall include in the biennial report specified in Section 25178 an accounting of all of the following:~~

~~(a) The actual funds expended for each site listed during the preceding two years pursuant to Section 25356.~~

~~(b) Removal and remedial actions at hazardous substance release sites pursuant to Section 25356.~~

~~(c) The state's efforts to obtain available federal funds for the purposes of this chapter.~~

~~(d) Federal funds which have been obtained by, or committed to, the state for purposes of this chapter.~~

~~(e) The state's efforts to obtain contributions to removal or remedial actions from potentially responsible parties.~~

SEC. 14. Section 25356.6 of the Health and Safety Code is repealed.

~~25356.6. (a) Notwithstanding any other provision of state law or any local ordinance or regulation, except as provided in subdivision (b), to encourage the prompt and effective cleanup of hazardous substance release sites, a potentially responsible party has no additional civil liability to any governmental entity under state or local law, for any prior acts or omissions associated with the conditions addressed in the~~

remedial action plan which is the subject of the arbitration decision, if the potentially responsible party has submitted to binding arbitration and has discharged its obligations under the arbitration decision, either by paying that party's apportioned share of the costs of all removal and remedial actions to the department or the regional water quality control board, or by performing the specified removal and remedial actions pursuant to a cleanup agreement. The release from liability specified in this section is conditioned on complete implementation of the remedial action plan, including, where appropriate, adequate sampling, testing, and maintenance of the site to which the remedial action plan is applicable to ensure that the level of cleanup required is achieved and maintained. However, this section does not affect the liability of any person for costs recoverable under Section 25352, unless these costs are specifically addressed in the arbitration decision or cleanup agreement. Where these costs are not addressed in the arbitration decision or cleanup agreement, the liability for these costs shall be determined pursuant to the applicable sections of this chapter and may be apportioned among the potentially responsible parties pursuant to Sections 25356.3 and 25356.4.

(b) The department, the California regional water quality control board, any party to the arbitration decision, or any party substantially affected by the arbitration decision may petition the panel to modify the apportionment of liability in an arbitration decision. Upon a showing of a material change in the facts known to the parties to the arbitration decision at the time it was issued, the panel shall modify the apportionment of liability specified in the arbitration decision, as appropriate, to reflect these changed facts. Upon a showing of a material change in the facts known to the department at the time it issued the final remedial action plan, or the discovery of new facts, the

~~department or regional board shall modify the remedial action plan, as appropriate, to reflect new or additional facts. The arbitration panel shall then modify its arbitration decision to reflect any modification of the remedial action plan made by the department.~~

~~(c) This section does not affect the existing rights of any individual to recover civil damages or to obtain equitable relief against any person, including a potentially responsible party, for physical injury or property damage caused by the release of hazardous substances at the site covered by the arbitration decision or at any other location.~~

~~(d) A party who has submitted to arbitration pursuant to this article and whose liability has been apportioned by the arbitration panel in an arbitration proceeding may seek indemnity from any other person liable for the party's apportioned share of the removal and remedial actions taken at a site which is the subject of the arbitration decision, including any department, agency contractor, or any other governmental agency. A potentially responsible party who does not submit to binding arbitration pursuant to this article, but whose liability has been apportioned in the arbitration decision and is subsequently found liable under this chapter has no right to indemnification for any removal or remedial action which is the subject of the arbitration decision from any party to that arbitration decision who has discharged its obligation under the arbitration decision or the cleanup agreement.~~

SEC. 15. Section 25356.7 of the Health and Safety Code is repealed.

~~25356.7. In order to encourage rapid resolution of differences among responsible parties and to speed the cleanup of sites, and notwithstanding any other provision of law, the following evidence is admissible in a court of law only to show the good faith~~



~~of the parties who have discharged their obligations under an arbitration decision issued, or cleanup agreement entered into, pursuant to Section 25356.4 or that the following removal and remedial actions specified in the remedial action plan were to be performed:~~

- ~~(a) A preliminary allocation of responsibility pursuant to Section 25356.1.~~
- ~~(b) The fact that any person has either participated or has not participated in a panel arbitration proceeding.~~
- ~~(c) The fact that any person has voluntarily implemented a remedial action plan, regardless of whether the plan is final for purposes of Section 25356.1.~~
- ~~(d) Any finding of fact or conclusion of law by the panel, including the apportionment of liability pursuant to Section 25356.3.~~
- ~~(e) Admissions made during the arbitration proceeding.~~
- ~~(f) Documents prepared by a party which has submitted to binding arbitration if the documents are prepared after the remedial action plan has been issued, and if the documents are prepared solely for the arbitration.~~

SEC. 16. Section 25356.8 of the Health and Safety Code is repealed.

~~25356.8. (a) Judicial review of the arbitration decision on the apportionment of liability is limited to a showing of fraud by a party to the arbitration proceeding or an abuse of discretion by the panel, or both.~~

~~(b) Judicial review of a decision by the department or the regional water quality control board modifying the remedial action plan pursuant to subdivision (b) of Section 25356.6 shall be conducted pursuant to Section 1085 of the Code of Civil Procedure and the standard of review shall be the same as that specified in subdivision (f) of Section 25356.1.~~

SEC. 17. Section 25356.9 of the Health and Safety Code is repealed.

~~25356.9. (a) The provisions of this chapter relating to the preparation, approval, and issuance of remedial action plans and to procedures for the apportionment of liability by the Hazardous Substance Cleanup Arbitration Panel do not do either of the following:~~

~~(1) Apply to any actions taken pursuant to Chapter 6.5 (commencing with Section 25100).~~

~~(2) Prohibit the department or the Attorney General, upon the request of the department, from pursuing the remedies specified in subdivision (a) of Section 25358.3 when the director determines that there may be an imminent or substantial endangerment to the public health or welfare or to the environment, because of a release or a threatened release of a hazardous substance.~~

~~(b) The department and the Attorney General may pursue any existing legal, equitable, or administrative remedies, pursuant to federal or state law, against any potentially responsible party named in a remedial action plan if the party does not submit to arbitration pursuant to Section 25356.3 or if the party has not discharged that party's obligations under an arbitration decision or cleanup agreement.~~

SEC. 18. Section 25356.10 of the Health and Safety Code is repealed.

~~25356.10. The Office of Environmental Health Hazard Assessment shall adopt, and may, from time to time, modify, revise, or repeal, regulations, consistent with this article, to implement the provisions of this article concerning arbitration proceedings. The regulations may include, but are not required to be limited to, all of the following:~~

~~(a) The method of initiating arbitration.~~

- ~~(b) The place of hearing, based upon the convenience of the parties.~~
- ~~(c) Procedures for the selection of neutral arbitrators.~~
- ~~(d) Procedure for conducting hearings.~~
- ~~(e) The providing of experts to assist the arbitrators if assistance is needed.~~
- ~~(f) Procedures for reimbursing the expenses which the panel incurs in conducting arbitrations.~~

SEC. 19. Article 6.5 (commencing with Section 25369) of Chapter 6.8 of Division 20 of the Health and Safety Code is repealed.

SEC. 20. Article 8 (commencing with Section 25395.1) of Chapter 6.8 of Division 20 of the Health and Safety Code is repealed.

SEC. 21. Section 25395.99 of the Health and Safety Code is amended to read:

25395.99. (a) A response plan may require the use of a land use control that imposes appropriate conditions, restrictions, and obligations on land use or activities, if, after completion of the removal and remedial actions specified in the response plan, hazardous materials remain at the site at a level that is not suitable for the unrestricted use of the site.

(b) Except as provided in subdivision (c), if the agency approves a response plan that requires the use of a land use control, the land use control shall be executed by the landowner and recorded by the landowner in the office of the county recorder in each county in which all, or a portion of, the land is located within 10 days of the date of execution.

(c) An agency shall not issue a certificate of completion to a person who submits a response plan that is approved by the agency and that requires the use of a land use

control, until the agency receives a certified copy of the recorded land use control. If the site that requires the land use control does not have an owner, or the agency determines the owner is incapable of executing a land use control in accordance with this section, the agency may record in the county records a “Notice of Land Use Restriction” that has the same effect as any other land use control executed pursuant to this section, and that is subject to the variance and termination procedures specified in subdivision (f).

(d) Notwithstanding any other provision of law, a land use control that is executed pursuant to this section and that is recorded so as to provide constructive notice shall run with the land from the date of recordation, is binding upon all of the owners of the land, and their heirs, successors and assignees, and the agents, employees, or lessees of the owners, heirs, successors and assignees, and is enforceable pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5.

(e) Notwithstanding any other provision of law, a land use control executed pursuant to this section is subject to Section 57012.

(f) A land use control imposed pursuant to this section is subject to the variance and removal procedures specified in Sections ~~25233 and 25234~~ 25223 and 25224.

SEC. 22. Chapter 6.85 (commencing with Section 25396) of Division 20 of the Health and Safety Code is repealed.

SEC. 23. Chapter 6.86 (commencing with Section 25396) is added to Division 20 of the Health and Safety Code, to read:

## CHAPTER 6.86. EXPEDITED REMEDIATION

25396. The requirements of the former California Expedited Remedial Action Reform Act of 1994 (former Chapter 6.85 (commencing with Section 25396) of Division 20) continues to apply to sites selected before the effective date of this chapter for participation in the pilot program established by that act.

SEC. 24. Chapter 6.10 (commencing with Section 25401) of Division 20 of the Health and Safety Code is repealed.

SEC. 25. There is hereby appropriated one thousand dollars (\$1,000) from the General Fund to the Department of Toxic Substances Control for administrative costs.

SEC. 26. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately and become operative not sooner than the operative date of the Budget Act of 2012.

## OFFICE COPY

Prepared By \_\_\_\_\_

Approved By \_\_\_\_\_

## LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, \_\_\_\_\_.

General Subject: Hazardous materials: remediation programs.

(1) Existing law requires an owner, lessor, or lessee who knows of or has probable cause to believe that a significant disposal of hazardous waste has occurred on, under, or into land or that the land is within 2,000 feet of a significant disposal of hazardous waste and who intends to construct or allow to be constructed on the land a building or structure for specified uses to apply with the Department of Toxic Substances Control to determine whether the land is to be designated as a hazardous waste property or a border zone property. Existing law authorizes a person to enter into an agreement with the department providing for the imposition of land use restrictions on the land. Existing law restricts the use of land if the land has been designated as a hazardous waste property or a border zone property. Existing law authorizes the department to grant a variance from the land use restrictions.

This bill would repeal the above provisions, but the department would retain the authority to grant a variance from the land use restrictions imposed pursuant to the repealed provisions. The department would also retain the authority to enter into an agreement with a property owner providing for restricting specific uses of the property.

(2) The California Expedited Remedial Action Reform Act of 1994 requires the department, upon the request of a responsible party, to have a site remediated pursuant to that act. That act authorizes the use of land use control as a part of the remedial plan for the site. That act authorizes the department to modify the land use control under specified conditions.

This bill would repeal that act. The bill would provide that the requirements of the act continue to apply to sites selected for remediation pursuant to the act before the effective date of this measure.

(3) Existing law establishes the Hazardous Substance Cleanup Arbitration Panel in the Office of Environmental Health Hazard Assessment and authorizes a responsible party to request arbitration before the panel, in lieu of a judicial process, for the purposes of apportioning liability for the costs of removal and remedial actions incurred in response to a release or threatened release of a hazardous substance into the environment.

This bill would repeal the panel and the arbitration process.

(4) Existing law authorizes a private site management team, upon the approval of the department, to conduct an investigation of potential hazardous substances release sites and to prepare a remedial design for the implementation of a response plan for a release site.

This bill would repeal these provisions.

(5) Existing law establishes the abandoned site program and requires the department to develop protocols and procedures for conducting an abandoned site survey of rural unsurveyed counties.

This bill would repeal that program.

(6) The California Land Environmental Restoration and Reuse Act authorizes a local government to implement a program to require the owner of property that may be affected by a hazardous material release, or threat of a release, to undertake remedial action on the property.

This bill would repeal the act.

(7) This bill would appropriate \$1,000 from the General Fund to the Department of Toxic Substances Control for administrative costs.

(8) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.